

Residential Tenancies Tribunal

[REDACTED] Decision 19-555-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:25 am on 05 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - a. An order for a payment of rent in the amount of \$1454.78;
 - b. An order for a payment of hearing expenses in the amount of \$20.00; and
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 19 of the *Residential Tenancies Act, 2018* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a)

respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlord submitted an affidavit with her application stating that the tenant was served with notice of the hearing by registered mail and the associated tracking history shows that the notice was delivered to the tenant on 15 August 2019. She has had 20 days to provide a response. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

7. The landlord amended the claim at the hearing and stated that she was now seeking \$1599.78 in rent arrears.

Issue 1: Rent - \$1599.78

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a monthly rental agreement with the tenant on 28 September 2017 and a copy of that executed agreement was submitted with her application (■ #1). The current rent is set at \$395.00.
9. The landlord submitted rent records at the hearing (■ #2) showing the payments she had received from the tenant since she last had a zero-balance in February 2018. These records show that the tenant has been in arrears since that date and although she had been making periodic payments, the arrears have continued to accumulate. Since May 2019, the tenant has only made 2 payments totalling \$645.00.
10. The rent records show that the tenant currently has a balance of \$1599.78 and the landlord is seeking an order for a payment of that amount.

Analysis

11. I accept the landlord's claim that the tenant has not paid rent as required and her records show that she is currently in arrears in the amount of \$1599.78.
12. As the landlord is also seeking an order for vacant possession of the rental unit, I find that she is entitled to a payment of rent to the date of the hearing and a per diem thereafter.
13. I calculate the rent owing to the date of the hearing to be \$1269.73 (\$1204.78 for the period ending 31 August 2019 and \$64.95 for September 2019 (\$395.00 per month x 12 months = \$4740.00 per year ÷ 365 days = \$12.99 per day x 5 days = \$64.95)).

Decision

14. The landlords' claim for a payment of rent succeeds in the amount of \$1269.73.
15. The tenant shall pay a daily rate of rent in the amount of \$12.99, beginning 06 September 2019, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Vacant Possession of Rented Premises

Relevant Submissions

The Landlord's Position

16. With her application, the landlord submitted a copy of a termination notice which she stated she had sent to the tenant by registered mail on 04 February 2019 (█ #3). This notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 February 2019.
17. The landlord had also submitted a copy of the tracking history (█ #4) showing that the tenant had signed for this notice on 06 February 2019.
18. According to the landlord's rent records, the tenant was in arrears in the amount of \$1159.78 when the notice was sent to her. The tenant did make a payment of \$300.00 on 14 February 2019 and a second payment of \$300.00 on 28 February 2019, but this only reduced the balance owing to \$559.78 and the tenant has remained in arrears to the date of the hearing.
19. The tenant has not vacated the rented premises as required and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

20. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

- (i) rented from month to month,***
- (ii) rented for a fixed term, or***

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

21. The landlord's evidence shows that the tenant had been in rental arrears for about a year when the termination notice was issued and she failed to pay off those arrears by 28 February 2019, the effective termination date set out in the notice.
22. As the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

Decision

23. The landlord's claim for an order for vacant possession of the rented premises succeeds.
24. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 3: Hearing Expenses

25. As the landlord's claim has been successful, the tenant shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

26. The landlord is entitled to the following:
 - A payment of \$1289.73, determined as follows
 - a) Rent Owing\$1269.73
 - b) Hearing Expenses.....\$20.00
 - c) Total Owing to Landlord\$1289.73
 - A payment of a daily rate of rent in the amount of \$12.99, beginning 06 September 2019 and continuing to the date the landlord obtains possession of the rental unit,
 - An order for vacant possession of the rented premises,

- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

11 September 2019

Date


John R. Cook
Residential Tenancies Tribunal